1 2 3 4 5 6 7	Kamala D. Harris Attorney General of California Marc D. Greenbaum Supervising Deputy Attorney General Gillian E. Friedman Deputy Attorney General State Bar No. 169207 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2564 Facsimile: (213) 897-2804 Attorneys for Complainant			
8	BEFORE THE			
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS			
10	STATE OF CALIFORNIA			
11	In the Matter of the Accusation Against: Case No. 3914			
12	CYNTHIA K. KOIKE			
13	PO Box 881343 Los Angeles, CA 90009 A C C U S A T I O N			
14	Pharmacist License No. RPH 33336			
15	Respondent.			
16				
17	Complainant alleges:			
18	PARTIES			
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity			
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).			
21	2. On or about August 28, 1979, the Board issued Pharmacist License No. RPH 33336			
22	to Cynthia K. Koike (Respondent). The Pharmacist License was in full force and effect at all			
23	times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.			
24	<u>JURISDICTION</u>			
25	3. This Accusation is brought before the Board under the authority of the following			
26	laws. All section references are to the Business and Professions Code unless otherwise indicated			
27				
28	///			

STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
 - 5. Section 4059 states:
- "(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

. . . .

- "(g) Nothing in this section shall be construed as permitting a licensed physical therapist to dispense or furnish a dangerous device without a prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. . . . "
- 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."
 - 7. Section 4301 states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

• • •

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

. . . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter

[Pharmacy Law, §§ 4000, et seq.] or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency. . . ."

REGULATORY PROVISION

8. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

COST RECOVERY

9. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 10. Fioricet is a brand name for the combination of butalbital, acetaminophen and caffeine and is designated a dangerous drug pursuant to section 4022.
- 11. Fiorinal is a brand name for the combination of butalbital, aspirin and caffeine. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, and is designated a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DISCIPLINE

(Unlawful Furnishing)

12. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision (o), and section 4059, in that while employed as a pharmacist at Kaiser Permanente Pharmacy, 25965 South Normandie, Harbor City, California (Kaiser Pharmacy), Respondent

diverted controlled substances and dangerous drugs from pharmacy stores. The circumstances are as follows:

- a. In December 2009, the Internal Pharmacy Audit and Compliance Department of Kaiser Pharmacy reviewed inventory regarding the possible loss or diversion of Fioricet.
- b. On or about February 18, 2010, Kaiser Pharmacy filed a Report of Theft or Loss of Controlled Substances, DEA Form 106, for 300 tablets of generic Fioricet missing from Kaiser Pharmacy inventory as of January 15, 2010.
- c. On or about January 13, 2010 through on or about March 12, 2010, Kaiser Pharmacy documented 386 tablets of Fioricet missing from Kaiser Pharmacy inventory.
- d. Video retrieved from the Kaiser Pharmacy on or between March 6 and 10, 2010, recorded Respondent removing Fioricet and Fiorinal from Kaiser Pharmacy medication bins in a drawer in the pharmacy as follows:

Date	Time	Drug	Tablets/Bottle
3/6/2010	5:40 PM	Fioricet	tablets in hand
3/6/2010	11:18 PM	Fioricet	bottle in sweater
3/9/2010	11:58 AM	Fiorinal	tablets in hand
3/9/2010	5:23 PM	Fiorinal	tablets in hand
3/10/2010	3:15 PM	Fiorinal	tablets in hand

e. On or about March 25, 2010, Kaiser Pharmacy filed a Report of Theft or Loss of Controlled Substances, DEA Form 106, for 217 Fioricet tablets and 40 Fiorinal tablets missing from Kaiser Pharmacy inventory due to employee pilferage.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption,)

13. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), in that while employed as a pharmacist at Kaiser Pharmacy, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when she diverted drugs from pharmacy stores. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 12, subparagraphs a – e, inclusive, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

- 1. Revoking or suspending Pharmacist License No. RPH 33336, issued to Cynthia K. Koike;
- 2. Ordering Cynthia K. Koike to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 6/7/1/

VIRGINIA HEROLD Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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